Applicant's response filed 14 April 2008 has been considered by the examiner. Claims 18-43 are pending. Claims 26, 27, 39 and 40 remain withdrawn as nonelected.

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 14 May 2008 has been entered.

Applicant's arguments and Declaration under Rule 132 have been carefully considered. The declaration filed compares the product of the instant claims and composition similar to that disclosed by the prior art relied upon. In the first instance, the declaration substitutes toluene for benzene and cobalt carboxylate for cobalt linoleate for safety reasons. The examiner agrees these modifications are prudent and reasonable. The declaration states "these two products are well known equivalents" but, fails to describe in what manner they are considered equivalent and fails to justify the differences in amounts employed. For example, is cobalt carboxylate precisely equivalent in every effect, other than chemical structure, producing substantially identical properties as would have been expected from cobalt linoleate or; is cobalt carboxy simply recognized has having similar uses. I.e. recognized as an effective drying agent for varnishes of similar composition though having somewhat different characteristics. Complete consideration of the evidence presented requires that a more detailed explanation of their equivalence be provided.

The standards used to measure viscosity are also different. The examiner agrees the substitution is reasonable and any difference between the two substantially inconsequential to the instant issues.

The method of preparation also differs. In the declaration the boiled linseed oil is preheated to 270 C versus 200 C in the prior art example. No explanation is provided to explain what effect this may have on the composition. The declaration does not disclose if the rosin ester is preheated while the prior art requires preheating to 200 C. The remainder of the process steps recited appear to be the same as those of the prior art or inconsequential in difference. The slight difference in solvent amounts would only be expected to be significant in close cases. The failure to observe formation of the "thread[s]" disclosed as signally the endpoints of two steps are construed as supporting a finding that the instant declaration fails to adequately compare the invention of the instant claims to that of the closest prior art.

While, the examiner recognizes that it may be impractical to exactly recreate an example set forth in a patent more than 50 years old, the necessary modifications and the expected effects thereof must be adequately explained. A response including such explanation or further exemplification of the prior art relied upon will be fully considered in the next office action.

The scope and meaning of the term "binder" as used in the instant claims have also been an issue in the prosecution of the this application. The applicant asserts that the term does not include the hardened coating composition set forth in the prior art. This position is not found persuasive. The term "binder" can refer to an uncured/unhardened material intended to be mixed with an aggregate, as well as, the cured/hardened binder that comprises the matrix of a composite

including the aggregate. In this case, for example, the hardened coating composition could anticipate the binder composition of the instant claims in either sense of the term "binder".

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 18-25, 28, 29, 31-38, 41 and 43 are rejected under 35 U.S.C. 102(b) as being anticipated by US 2749247.

Example IV of the reference teaches a composition comprising "(b)" 60% linseed (flax) (viscosity about 30 Pa.s) and "(a)" 40% rosin ester (boiling point about 120 C) with cobalt linoleate added as a drier (catalyst) and a coloring agent of lamp black. The Tung oil employed does not appear to materially affect the characteristics of the invention (e.g. no chance in "thread" length is observed). Even considering the Tung oil as a component of "(b)", the composition would contain a ratio of a to b of 33:67. While the mixture is formulated with 300cc of an organic solvent in apparent contradiction to the "consisting essentially of" language of the instant claims, the dried coating formed would be essentially free of organic solvent as it is driven off during drying. It is the dried composition which would be expected to have properties similar to those recited in the instant claims. While the patent does not disclose the binder for the same intended use, it teaches compositions having the same ingredients in proportions falling within the scope of the instant claims. As a material's properties are inseparable from that material, it would be expected that the compositions of the reference would exhibit all the properties recited in the instant claims. No evidence to the contrary is of record.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 30 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 2749247 in view of Barnes et al.

The difference between the patent example and the instant claim 11 is the anion of the cobalt salt. Page 16 of the Barnes et al reference teaches the octanoate salt of cobalt is a useful drier for drying oils in addition to the linoleate salt of the patent. It would have been obvious to one of ordinary skill in the art to substitute cobalt octanoate as the drier in the patent example because Barnes et al teach it is useful as such.

This application contains claims 26, 27, 39 and 40 drawn to an invention nonelected with traverse in the reply filed on 16 November 2007. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David M. Brunsman whose telephone number is 571-272-1365. The examiner can normally be reached on M, Th, F, Sa; 7:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on 571-272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David M Brunsman/
Primary Examiner, Art Unit 1793

DMB